Harvesting and Road Construction near Private Land in Clearwater

Complaint Investigation 020439

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The Investigation

The Complaint

On October 15, 2002, the Forest Practices Board received a complaint about harvesting and road construction in the Clearwater demonstration forest, about 125 kilometres north of Kamloops. The complainant owns property beside a cutblock in the demonstration forest, and she asked the Ministry of Forests to leave a 20-metre treed buffer between the cutblock and her property. The ministry maintained that no buffer was required.

The complainant was also concerned about the road to the cutblock. She believed the right-of-way was much wider than necessary, and that excessive soil removal would prevent site reclamation. Further, the complainant questioned whether the road was even necessary.

The Board decided to investigate whether the ministry complied with the Code when it approved the cutblocks bordering private land, and whether the road to the cutblock met Code requirements.

Background

The Clearwater demonstration forest is an operating area of the Small Business Forest Enterprise Program (SBFEP). The demonstration forest is on Crown land, and a forest development plan (FDP) guides forest practices. The demonstration forest has a network of cross-country ski trails, managed by the Wells Gray Outdoors Club under an agreement with the Ministry of Forests.

In 1998, the ministry proposed two cutblocks in the demonstration forest beside private property. The two cutblocks, hereinafter called blocks 1 and 2, were approved in 1999.

In June and July 2002, a contractor constructed a road to block 1 for the ministry.

The complainant bought a lot beside block 1 in August 2002 to build a house. Harvesting the nine-hectare cutblock began on September 18, 2002. When the complainant determined the boundaries of block 1, she asked the ministry to leave a 20-metre treed buffer between her property and the cutblock.

The ministry responded that there is no requirement or obligation to leave a reserve between a cutblock and private land. However, the ministry proposed to relocate a wildlife tree patch to help screen the operations from the complainant. The complainant thought that was inadequate and asked the Board to investigate.

Issues

1. Did the ministry comply with the Code when it approved blocks 1 and 2 beside private land?

The Code does not prohibit planning and approving cutblocks beside private land. The ministry was correct when it informed the complainant that there is no requirement for a treed buffer to be left between block 1 and the complainant's property.

However, before cutblocks are approved, the *Forest Practices Code of British Columbia Act* (the Act) requires that plans be made available for public review and comment. Blocks 1 and 2 were first proposed in 1998 as part of the 1999-2003 SBFEP FDP. The ministry held an open house on December 2, 1998, for the public to review and comment on planned operations. There were no public comments about the two cutblocks beside private property. The owners of the property were aware of planned development through their participation in a watershed assessment process, but they did not comment on the proposed blocks.

The cutblocks were approved on June 8, 1999, and were shown as approved cutblocks on two subsequent FDPs, including the current 2001-2005 FDP.

The complainant did not buy her property until August 2002, so she did not participate in the public review and comment process in 1998. However, the complainant worked as a forest technician for the ministry for six years and she said she knew the general location of the planned cutblocks.

Although harvesting was already underway when the complainant raised her concerns, the ministry considered them. The proposal of a 20-metre leave strip raised concerns about blowdown, forest health and obligations to the licensee. Nevertheless, the ministry asked the licensee not to harvest up to the boundary until it had a chance to consider options. As a result, harvesting in a 5 - to 10-metre strip of timber between the cutblock and the complainant's property was deferred. Harvesting in the rest of the two cutblocks is now complete. Despite the timber retention, block 1 can easily be seen from the complainant's property.

The ministry has not finalized its plans yet, but it is likely that the remaining trees will be left, since the licensee has moved its equipment from the area. If the leave strip remains, the ministry will have to amend its silviculture prescription.

In summary, blocks 1 and 2 were planned and approved in accordance with Code requirements for public consultation. The Code does not prohibit planning, approving and harvesting cutblocks adjacent to private land. Although not required, the ministry deferred harvesting in a relatively narrow buffer strip along the property boundary.

2. Did the road to block 1 meet Code requirements?

The road to block 1 is approximately 180 metres long. The complainant said that at 30 metres, the road right-of-way (or clearing width) is excessive, and the removal of large areas of soil would make site reclamation impossible. In addition, the complainant said the new road was not required because a ski trail already accessed the cutblock. The complainant did not discuss this issue with the ministry before she filed this complaint.

Section 60(2) of the Act requires the district manager to prepare a road layout and design in accordance with the regulations before constructing a road. Section 8(1)(b) of the *Forest Road Regulation* (FRR) requires a person preparing a road layout and design to address the 'clearing width.' Clearing width is the width required to be cleared of standing timber to accommodate road construction, maintenance and use.

The FRR does not specify appropriate clearing widths. Instead, it states that the road layout and design must address "clearing widths of the minimum required" to accommodate such factors as the road itself, user safety, drainage, landings and snow removal, among others.

District staff prepared a road layout and design, using a provincial template. The template does not provide a field for clearing width. The ministry's chief engineer said the ministry removed a reference to clearing width from the template in 2000. He explained that clearing width will naturally vary according to topography and operational and safety constraints at any given location, so there is no value in specifying an average clearing width in the road layout and design template. The chief engineer said the intent of the regulation was simply to ensure that clearing widths were kept to a minimum, while accommodating construction, maintenance and safe use of the road.

The Board agrees that it would not be useful to specify an average clearing width. However, the requirement to address clearing width in the road layout and design remains in the FRR. As a result, any person responsible for preparing the road layout and design – and using the template – would not comply with section 8(1)(b) of the FRR.

In this situation, the district manager was responsible for preparing the road layout and design. He did not comply with the FRR when he prepared the road layout and design because he did not address clearing width. Correspondingly, he did not comply with section 60(2) of the Act because the road layout and design was not prepared in accordance with the regulations. However, because the road is short, the impact is not significant.

Given that the clearing width was not specified in the road layout and design, how did the ministry decide that a 30-metre clearing width was the minimum required?

The ministry explained that the clearing width accommodates the road prism, and provides for three metres of undisturbed soil between the cut slope and the standing trees to protect the roots. The road is also wider near the entrance to block 1, where it skirts bedrock, and at a junction with another road.

The ministry said the clearing width also accommodates *Occupational Health and Safety Regulation* requirements. The regulation states that roadside hazards such as trees be cleared back to a safe distance, and foliage must be removed so that a vehicle operator has an adequate view on curves and at intersections. There is no evidence that a 30-metre clearing width was necessary to maintain an adequate view.

Finally, the ministry pointed out that the demonstration forest is popular with cross-country skiers, and some of the roads are part of the trail network. A wider clearing allows more snow to reach the ground and improves the conditions for cross-country skiing. In summary, the ministry said that, in its experience in the district, a 25- to 30-metre clearing width accommodates all of the factors required by the FRR.

The 30-metre clearing width certainly accommodates the factors set out in the FRR. However, in the Board's opinion, it is wider than required. The clearing width is not as narrow as it could have been, consistent with the intent of the FRR. However, due to the short length of the road, the impact is not significant.

The complainant was also concerned that, because of the width, an excessive amount of soil was stripped to build the road, and that will make it impossible to reclaim the road. For cutblocks, the silviculture prescription limits the amount of soil disturbance. However, there is no similar requirement for roads because the nature of road construction is to disturb soil.

The ministry anticipates that the road will be deactivated in one to three years, and any roadside disturbance beyond the running surface will be rehabilitated. The ministry does not anticipate any difficulty reclaiming this area.

3. Was the road required?

The complainant suggested that the road to block 1 was not required because there was already a ski trail accessing the cutblock that is wide enough to permit hauling. In fact, the licensee used both the road and the ski trail to haul timber.

The ministry considered the road necessary for downhill yarding and hauling. If only the ski trail was used, yarding of over half of the block would have been more difficult, as the slope is approximately 20 percent. The road was shown in the SBFEP FDP and did not provoke any public comments. In the Board's opinion, the road location improved yarding, and its location was reasonable and necessary.

Conclusions

The ministry made a reasonable effort to accommodate the complainant's concerns by deferring some harvesting, even though those concerns were raised when harvesting was

already underway. There is no compliance issue; the licensee was legally entitled to harvest the cutblock and there is no requirement to leave a reserve beside private land.

It is not very useful to specify an average clearing width in a road layout and design, however the *Forest Road Regulation* requires that clearing width be addressed. The district manager did not comply with section 8(1)(b) of the *Forest Road Regulation* because the road layout and design did not address clearing width. In addition, he did not comply with section 60(2) of the Act because the road layout and design was not in accordance with the regulations. However, in these circumstances, the impact is not significant.

In the Board's opinion, the road to block 1 was operationally necessary, however the ministry did not minimize the road clearing width. Instead, a default clearing width of 30 metres was used when the road was laid out. Using a default width is not consistent with minimizing clearing width. Given the short length of road, this was not a significant problem. However, using a default clearing width should not be a standard practice. Clearing widths should only be as wide as necessary to allow construction, maintenance and safe use of the road.

Update

The *Forest Road Regulation* was amended on December 17, 2002. Section 8(1)(g) of the amended regulation states, in part, that a person required to construct or modify a road must "establish clearing widths that are the minimum required" to accommodate the road prism, user safety and landings, among other factors. Instead of requiring that clearing width be 'addressed' in a road layout and design, the amended regulation specifically requires that clearing widths be as narrow as possible while accommodating the construction, maintenance and safe use of a road.